

### **REMARKS**

Reconsideration of the rejections set forth in the office action is respectfully requested. By this Amendment, claims 7 and 17 have been canceled and claim 1 has been amended. Currently, claims 1-3, 9, 11, and 13-16 are pending in this application.

Miller teaches a system in which content sources (information providers e.g. USA Today) see Miller at Col. 5, lines 15-20, distribute content to replication servers over the Internet. (See e.g. Miller at Col. 5, lines 19-32). The content sources in Miller are able pay higher fees to enable transmission of their content to be prioritized ahead of content sources that pay lower fees. (Miller at col. 6, lines 52-57). Miller refers to the "priority level" of a request, but really what Miller is referring to is the priority level of the content source, e.g. whether the content source has paid to have preferential treatment for bandwidth allocation. (See Miller at Col. 6, lines 5-7 "priority levels assigned to the content sources..."; Col. 6, lines 39-40 "priority level assigned to the content source..."; Col. 6, lines 52-57; Col. 6, lines 65-66; Col. 7, lines 1-4). There are many other areas where Miller refers to the priority level of the content source as well. In each instance, the priority level is associated with the content source, not with the particular transaction request on the network.

Ruttenberg teaches a system in which a receiver such as a general purpose computer, a set top box, or Internet appliance, (Ruttenberg at Paragraph 24) can request download of text, graphics, video, or audio. (Ruttenberg at Paragraph 25). The system in Ruttenberg will then schedule transfer of the download either from a source directly or via an intermediary.

In Ruttenberg, a scheduling module 320 is used to process data transfer requests. (Ruttenberg at paragraph 33). Figs. 7A, 7B, and 7C show three embodiments of this scheduling module. Fig. 7A is described in paragraphs 39-40. As noted in this section, one embodiment of the scheduling module 320 uses the requesting node, source node, file size, and deadline to determine whether a transaction is feasible. (Ruttenberg at paragraph 39). Only feasible transactions are scheduled in this embodiment. The feasible transactions are then sorted according to priority as assigned by the priority module. (Ruttenberg at paragraph 40).

An alternative to the feasibility scheduling module of Fig. 7A is the explicit scheduling module of Fig. 7B. (Ruttenberg at Paragraph 41). In this embodiment, the scheduling module only looks at the availability of resources. Ruttenberg does not appear to mention priority as a consideration in this embodiment.

In Ruttenberg, a priority module 370 uses information about the request (requesting node, source node, file size, and deadline) to determine which requests should be provided highest priority. (Ruttenberg at paragraph 63). Specifically, in Ruttenberg, “transfers not in progress and with the earliest start time are given the highest priority.” (Ruttenberg at paragraph 57). Users can also pay a higher price for the download and will assigned a higher priority if they do so. (Ruttenberg at paragraph 55).

Thus, Miller teaches a system in which a content sources are able to pay higher prices for data transfer to be assigned higher priority on the network and, hence, greater likelihood of being able to transfer data on the network. The scheduling system does not have a notion of who is requesting the transfer or why the transfer is being requested, but rather simply knows that the source is associated with a high priority (higher paying) source.

Ruttenberg also does not have a notion of who is requesting the transfer or why the transfer is being requested, but only knows that the source and receiver are available, and knows whether the receiver has agreed to pay a premium to obtain higher priority over other similar transfers on the network.

Applicants determined that, in a medical context, the identity of the person requesting the transfer is important. Likewise the location of the person who made the request and the reason that the request was made may also be important when determining how to prioritize transfer of medical images on the network. For example, if a physician is in an operating room and makes a request for a medical image, the network should provide the medical image transfer with a higher priority than if the physician was in her office and requested the same medical image. Likewise, transfer of the same medical image to the same location should be given different priorities if requested by an orderly or a physician – the orderly is more likely to request medical images ahead-of-time so that the medical images are available when the physician arrives, whereas if the physician is requesting the transfer by definition the physician is already in the room. Thus, transfer of medical images should look not only at the source and destination, but who requested the transfer, where the person was at the time of the request, and why the request was made. Neither Miller nor Ruttenberg consider these aspects when setting priority.

Although the Examiner has aptly pointed out that the priority module 370 of Ruttenberg uses information about a request (requesting node, source node, file size, and deadline), this does not mean that Ruttenberg suggests looking to see who made the request. Rather, Ruttenberg

only looks to see which requesting node made the request. There are several reasons that the priority module needs to know the requesting node, for example in connection with determining the feasibility of making the transfer or determining whether the requesting node has available storage bandwidth to handle the data transfer. This does not equate to knowing the identity of the individual that made the request and prioritizing requests based on who is making the request and why the person is making the request.

Applicants have amended claim 1 to recite that the step of ascertaining a relative policy-based priority of the transaction request compared to other previously received transaction requests includes the step of determining, from the transaction request, an identity of an individual that issued the transaction request using the client application, where the individual was located when the transaction request was issued, and why the transaction request was issued. This amendment is supported by the application as originally filed, for example in Paragraph 47. Ruttenberg and Miller each teach that the source and/or receiving device are important in prioritizing transfers on the network. Neither Ruttenberg nor Miller teach or suggest also looking at the identity of the individual that issued the transaction request, where the client application is being run to enable the individual to issue the transaction request, or why the transaction request was issued. Accordingly, applicants respectfully submit that the amended claims are patentable over the combination of Ruttenberg and Miller.

#### Conclusion

In view of foregoing remarks, applicants respectfully submit that the Examiner failed to show that the combination of references renders the claims, as drafted, unpatentable under 35 USC 103. Accordingly, applicants respectfully submit that the claims of this application are patentable over the art of record and an action to this effect is respectfully requested.

Applicants would welcome an opportunity to discuss this application with the Examiner if the Examiner feels that a telephone interview would further prosecution of this application. Similarly, if the Examiner has any questions or concerns regarding these remarks the Examiner is requested to telephone the undersigned at the telephone number listed below.

Extension of Time

Applicants request a three month extension of time to respond to the outstanding Office Action. Payment of the fee for the extension of time is being submitted herewith. If any additional fees are due in connection with this filing, the Commissioner is hereby authorized to charge payment of the fees associated with this communication or credit any overpayment to Deposit Account No. 141315 (Ref: 16421BAUS01U).

Respectfully Submitted

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